

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA EX REL
FORT-CICA ROOFING & GENERAL
CONTRACTORS, INC.,

Civil Case No.: 09-9880 (LAK)

Plaintiff,

ANSWER

-against-

Assigned to: Hon. Lewis A. Kaplan

WESTCHESTER FIRE INSURANCE
COMPANY,

Defendant.

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Defendant Westchester Fire Insurance Company (hereinafter
"Westchester") by its attorneys Gottesman, Wolgel, Malamy, Flynn & Weinberg, P.C.,
as and for its Answer to Plaintiffs' Complaint dated November 30, 2009 alleges the
following:

1. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations set forth in paragraphs 1, 3, 4, 8, 9, 10, and 12 of the Complaint.
2. Denies the truth of the allegations set forth in paragraph 2 except admits
that Westchester has a place of business at 436 Walnut Street, Philadelphia,
Pennsylvania, 19106.
3. In answer to the allegation set forth in paragraph 5 of the Complaint,
repeats and realleges every answer and defense as though set forth at length.
4. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations set forth in paragraph 6, except admits upon information and belief
that Ideal Interiors, Inc. entered into a certain contract with the General Services
Administration and respectfully leaves all interpretations of the contract to the Court.

5. Denies the truth of the allegations set forth in paragraph 7 except admits that Westchester issued bond K07136997 at the request of Ideal Interiors, Inc. and specifically avers that all claims against said bond are subject to the terms, provisions, conditions and limitations therein including but not limited to the penal sum.

6. Denies the allegations set forth in paragraph 11 except admits that a document purporting to be a claim was received and respectfully leaves all interpretations of that document to the Court.

7. Denies the allegations set forth in paragraph 13 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

8. This Court lacks subject matter jurisdiction.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

9. Plaintiff's claim is barred by the statute of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

10. Plaintiff's action is untimely under the Miller Act, 40 U.S.C. §3133 (formerly 40 U.S.C. §270(a) *et seq.*).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

11. Plaintiff failed to comply with conditions precedent.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

12. The Complaint fails to state a cause of action upon which relief may be granted.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

13. Westchester's liability, if any is determined to exist, is limited by the terms, conditions, provisions, and limitations of the bond.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

14. Westchester's liability, if any is determined to exist, is limited to the penal sum of the bond.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

15. Westchester's liability, if any is determined to exist, is limited by the terms of the bond pursuant to which Westchester assumed no liability for consequential damages, attorney's fees, costs of suit, interest or penalties.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

16. Westchester hereby incorporates by reference any and all defenses, which have been or may be raised by its principal, Ideal Interiors, Inc.

WHEREFORE, defendant Westchester Fire Insurance Company demands judgment dismissing Plaintiffs' Complaint together with costs and disbursements, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
December 22, 2009



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